

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

LEROY MONTEZ,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-13-1096-R
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Petitioner Leroy Montez, a federal prisoner appearing pro se, has filed an application for leave to proceed *in forma pauperis* and supporting affidavit (Doc. No. 9). This matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B), (C). Having reviewed said application, the undersigned finds that Mr. Montez has a current available balance of \$81.79 in his institutional account, which is sufficient to prepay the \$5.00 filing fee in this habeas action.

Because Mr. Montez has not demonstrated an inability to prepay the filing fee, the undersigned recommends that the District Judge:

- (1) deny the application for leave to proceed *in forma pauperis*;
- (2) order Mr. Montez to pay the full \$5.00 filing fee within 21 days of any order adopting this Report and Recommendation, *see* Rules 1(b), 3(a) of the Rules Governing Section 2254 Cases in the United States District Courts; LCvR3.2, 3.3(e); and


- (3) dismiss the action without prejudice to refiling if Mr. Montez fails to timely pay the filing fee to the Clerk of this Court, or to show good cause for the failure to do so, within 21 days of any order adopting this Report and Recommendation, *see* LCvR 3.3(e).

NOTICE OF RIGHT TO OBJECT

Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by December 9, 2013, in accordance with 28 U.S.C. § 636 and Federal Rule of Civil Procedure 72. Petitioner further is advised that failure to timely object to this Report and Recommendation would waive the right to appellate review of both factual and legal issues contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This report and recommendation does not terminate the referral.

ENTERED this 18th day of November, 2013.



CHARLES B. GOODWIN
UNITED STATES MAGISTRATE JUDGE